

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 4, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of

such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 2012.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et seq.*

**Subpart B—Alabama**

■ 2. In § 52.50, table “EPA Approved Alabama Non-Regulatory Provisions” in paragraph (e) is amended by adding a new entry for “Attainment Plan for the Alabama Portion of the Chattanooga 1997 Annual PM<sub>2.5</sub> Nonattainment Area” to read as follows:

**§ 52.50 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA-APPROVED ALABAMA NON-REGULATORY PROVISIONS**

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* * * * * Attainment Plan for the Alabama Portion of the Chattanooga 1997 Annual PM <sub>2.5</sub> Nonattainment Area.	* * * * * A portion of Jackson County, Alabama.	* * * * * 10/07/2009	* * * * * 10/05/2012 [Insert citation of publication].	* * * * *

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R01–OAR–2011–0453, FRL–9736–5]

**Approval and Promulgation of Implementation Plans; Vermont: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to the Vermont State Implementation Plan (SIP), submitted by the Vermont Department of Environmental Conservation (VT DEC) Air Pollution Control Division to EPA on February 14, 2011. The SIP revision modifies Vermont’s Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Vermont’s PSD permitting requirements for their

greenhouse gas (GHG) emissions. EPA proposed approval of these regulatory revisions on August 16, 2012, and received no comments. This action affects major stationary sources in Vermont that have GHG emissions above the thresholds established in the PSD regulations.

**DATES:** *Effective Date:* This rule is effective on November 5, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2011–0453. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests

that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Vermont SIP, contact Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Mr. Dahl’s telephone number is (617) 918–1657; email address: [dahl.donald@epa.gov](mailto:dahl.donald@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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## I. What is the background for this action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the Vermont SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,<sup>1</sup> the "Johnson Memo Reconsideration,"<sup>2</sup> the "Light-Duty Vehicle Rule,"<sup>3</sup> and the "Tailoring Rule."<sup>4</sup> Taken together and in conjunction with the Clean Air Act (CAA), these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

Recognizing that some states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year of GHG, and do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA published a final rule on December 30, 2010, narrowing its previous approval of PSD programs as applicable to GHG-emitting sources in SIPs for 24 states, including Vermont (PSD Narrowing Rule).<sup>5</sup> In the PSD Narrowing Rule, EPA withdrew its approval of Vermont's SIP, among other SIPs, to the extent that SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule. As a result of the Narrowing Rule, Vermont's approved SIP provided the state with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds, and required new and modified sources to receive a PSD permit based on GHG emissions only if

<sup>1</sup> "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

<sup>2</sup> "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

<sup>3</sup> "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

<sup>4</sup> "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

<sup>5</sup> "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans." 75 FR 82536 (December 30, 2010).

they emitted at or above the Tailoring Rule thresholds.

On February 14, 2011, in response to the Tailoring Rule and earlier GHG-related EPA rules, VT DEC submitted a revision to EPA for approval into the Vermont SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to PSD permitting requirements for GHG emissions. Subsequently, on August 16, 2012 (77 FR 49404), EPA published a proposed approval of this SIP submittal. Specifically, Vermont's February 14, 2011 SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's August 16, 2012, **Federal Register** action.

## II. What comments did EPA receive?

The public comment period on the proposed approval of Vermont's SIP revision ended on September 17, 2012. EPA did not receive any comments on the proposed approval of this SIP revision.

## III. What is the effect of this action?

Final approval of Vermont's February 14, 2011 SIP revision incorporates changes to the state's rules to establish the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, confirming that smaller GHG sources emitting less than these thresholds will not be subject to PSD permitting requirements under the approved Vermont SIP. EPA has determined the SIP revision approved by today's action is consistent with EPA's regulations, including the Tailoring Rule. Furthermore, EPA has determined this SIP revision is consistent with section 110 of the CAA; therefore, EPA is approving this revision into Vermont's SIP.

As a result of today's action approving Vermont's incorporation of the appropriate GHG permitting thresholds into its SIP, paragraph 40 CFR 52.2372(b), as included in EPA's PSD Narrowing Rule, is no longer necessary.<sup>6</sup> Thus, today's action also amends 40 CFR 52.2372 to remove this unnecessary regulatory language.

## IV. What action is EPA taking?

Pursuant to section 110 of the CAA, EPA is approving Vermont's February

<sup>6</sup> 40 CFR 52.2372(b) codifies EPA's limiting its approval of Vermont's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds.

14, 2011 SIP revision, relating to PSD requirements for GHG-emitting sources. Our approval includes amendments to Subchapter I as follows: new definitions of "Greenhouse Gases" and "Subject to Regulation," amendments to the definition of "Major Stationary Source," and the addition of a provision regarding significance levels of greenhouse gases to the definition of "Significant."<sup>7</sup> For federal purposes, EPA is adopting the interpretations of Vermont's use of the terms "Greenhouse Gases," "Subject to Regulation," and its incorporation by reference of various federal regulations, as set forth in our proposed approval. See 77 FR 49407. EPA is also approving the classification of certain sources of greenhouse gas emissions as air contaminant sources in Subchapter IV, section 5–401(16).

These revisions establish appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting stationary sources in accordance with EPA's June 3, 2010, Tailoring Rule. With this approval, EPA also amends 40 CFR 52.2372 by removing subsection (b).

EPA has made the determination this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. The detailed rationale for this action is set forth in the proposed rulemaking referenced above, and in this final rule.

## V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

<sup>7</sup> As we noted in the proposed rulemaking, the definition of "Significant" in Vermont's SIP revision lacks significance thresholds for several non-GHG pollutants, but we are approving the revised definition as "SIP strengthening." See 77 FR 49407.

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249,

November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 4, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 24, 2012.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart UU—Vermont**

■ 2. § 52.2370(c) the Table “EPA-Approved Vermont Regulations” is amended by:

■ a. Revising entries to state citations for Section 5–101 and 5–401.

■ b. Adding footnote 1.

The revisions and addition read as follows.

**§ 52.2370 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED VERMONT REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date <sup>1</sup>	Explanations
* Section 5–101 .....	* Definitions .....	* 2/8/2011	* 10/5/2012, [Insert <b>Federal Register</b> page number where the document begins].	* Added definitions of “Greenhouse Gases” and “Subject to Regulation,” amended definition of “Major Stationary Source,” added significance level for greenhouse gases to the definition of “Significant.”
* Section 5–401 .....	* Classification of air contaminant sources.	* 2/8/2011	* 10/5/2012, [Insert <b>Federal Register</b> page number where the document begins].	* Added certain sources of greenhouse gas emissions to the list of air contaminant sources
* .....	* .....	* .....	* .....	* .....

<sup>1</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

\* \* \* \* \*

■ 3. Section 52.2372 is amended by removing and reserving paragraph (b).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2009-0882; FRL-9738-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Streamlining Amendments to the Plan Approval Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is granting limited approval to a State Implementation Plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) on April 14, 2009. The revision pertains to PADEP's plan approval requirements for the construction, modification, and operation of sources, and is primarily intended to streamline the process for minor permitting actions. This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on November 5, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2009-0882. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** David Talley, (215) 814-2117, or by email at [talley.david@epa.gov](mailto:talley.david@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On April 12, 2012 (77 FR 21908), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of amendments to the plan approval requirements for the construction, modification, reactivation, and operation of sources under 25 Pa. Code chapter 127. The formal SIP revision was submitted by PADEP on April 14, 2009.

##### II. Summary of SIP Revision

The primary purpose of the amendments is to streamline the permitting process by eliminating some of the administrative burden and costs associated with processing minor permitting actions, while preserving the right of the public to review and comment on those proposed actions. The proposed amendments generally affect five regulations: Section 127.12b, pertaining to "shakedown" periods for new or modified sources; section 127.12d, pertaining to completeness determinations; sections 127.44 and 127.45, pertaining to public notice requirements; and section 127.48, pertaining to conferences and hearings. The specific requirements of the SIP revision and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

##### III. EPA's Response to Comments Received on the Proposed Action

EPA received a single set of comments on its April 12, 2012 proposed action to approve revisions to the Pennsylvania SIP. These comments, provided by the Clean Air Council, (hereinafter referred to as "the Commenter"), raised concerns with regard to EPA's April 12, 2012 proposed action. A full set of these comments is provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

Generally, the Commenter raises three areas of concern. First, the Commenter asserts that the proposal to increase the duration of "shakedown period" extensions from 120 days to 180 days is inappropriate. Second, the Commenter asserts that the addition of the completeness determination requirements adds to PADEP's permitting burden, and together with the other contested revisions, " \* \* \* increases the burden on the public

contrary to the stated purpose of the Clean Air Act \* \* \* " (See, Comments at 3). Third, the Commenter raises several specific concerns regarding the proposed revisions to the public participation requirements under 25 Pa. Code section 127. EPA's response to these comments is below.

*Comment 1:* The Commenter notes that PADEP's previously approved regulations allow a 180-day shakedown period, with provisions for obtaining a 120-day extension. The Commenter further asserts that PADEP has not provided any justification as to why the existing 120-day extension period should be expanded to 180 days, and that, in the absence of such justification, the proposed longer extension period is " \* \* \* both unnecessary and improper." (See, Comments at 2).

*Response 1:* 25 Pa. Code section 127.12b outlines the terms and conditions which must be included in each plan approval. Under section 127.12b(c), each plan approval " \* \* \* must authorize temporary operation to facilitate shakedown of sources and air cleaning devices, to permit operations pending issuance of a permit under Subchapter F (relating to operating permit requirements) or Subchapter G (relating to Title V operating permits) or to permit the evaluation of the air contamination aspects of the source." The currently approved regulations already allow for a 120-day extension of this temporary operating authorization. EPA disagrees with the Commenter's assertion that allowing a longer, 180-day extension is improper, and we leave to PADEP's discretion the issue of whether it is necessary. CAA section 110(k)(3) requires the Administrator to approve a SIP submittal " \* \* \* if it meets all of the applicable requirements of this chapter." We cannot identify, nor did the Commenter point to any CAA requirement or provision of its implementing regulations which is contrary to PADEP's proposed expansion of the temporary operating authorization period. Furthermore, we note that 25 Pa. Code section 127.12b requires each plan approval to contain all applicable CAA requirements, including monitoring, recordkeeping and reporting, and prohibits PADEP from approving or extending the temporary authorization period in any instance which would circumvent the requirements of 25 Pa. Code section 127. Therefore, we are approving the revisions to 25 Pa. Code 127.12b as submitted.

*Comment 2:* Although acknowledging that the proposed addition of the completeness determination requirements of 25 Pa. Code section